

## REMARKS

### I. OVERVIEW

Restriction is required between Group I claims 1-30, 43 and 44 (apparatus claims) and Group II claims 31-42 (method claims). Applicants respectfully traverse the restriction requirement. Applicants also make a provisional election as required by the rules.

### II. TRAVERSAL

The test for whether claims are properly restricted is whether they are "independent and distinct" from one another. Clearly the two groups of claims are dependent. Both relate to distribution of gas or liquid phase substances.

Thus, the issue boils down to distinctness. The Examiner takes the position the apparatus claims are distinct from the method claims because "the process as claimed can be practiced by another materially different apparatus or by hand" or "the apparatus as claimed can be used to practice another and materially different process." The Examiner concludes the process can be practiced "using an apparatus that does not include the specific structural elements of the 'member' of the apparatus recited in claim 1, or the specific structural elements of the 'rotatable member' of the apparatus recited in claim 43". (Office Action, pg. 2).

Applicants respectfully traverse the restriction for the following reasons.

The patent laws allow the same invention to be claimed in different ways. 35 U.S.C. § 100/101 allows apparatus claims and method claims on the same invention. If claims define the same essential features of a single disclosed embodiment, they are properly in the same application. MPEP § 806.03. Essentially they are different definitions of the same subject matter.

For reference, claims 31 and 43 are reproduced side-by-side below. This is done to emphasize how they contain the same essential features.

Claim 31	Claim 43
A method of distributing a gas and/or liquid phase substance from an inlet to multiple outlets comprising:	An apparatus for distributing a gas and/or liquid phase substance from an inlet to multiple outlets comprising:
distributing substance to the plurality of outlets	a housing comprising an inlet, a plurality of outlets, a chamber between inlet and a plurality of outlets;
by rotating a fluid pathway in fluid communication between inlet and a space in fluid communication with all of the plurality of outlets.	a rotatable member positioned in the chamber, the rotatable member defining an external substance path in fluid communication with the inlet and a space in fluid communication with a plurality of outlets; so that rotation of the rotatable member rotates the substance path and distributes substance from the inlet to the space in fluid communication with the outlets.

As can be seen, claim 31 recites "an inlet", "multiple outlets", and "rotating a fluid pathway ... between inlet and a space in fluid communication with all the plurality of outlets."

In comparison, claim 43 has "an inlet", "multiple outlets", "a chamber between inlet and the plurality of outlets", "a rotatable member defining ... path in fluid communication with the inlet and a space in fluid communication with a plurality of outlets".

Thus, the two claims do not define materially different apparatus or methods. And, differences between the member of the apparatus and the method are not material differences relative to what distinguishes the invention from the prior art.

Particularly note that method claim 32, immediately dependent from independent method claim 31, calls out a rotatable member. This further highlights how the method claims pertain to an inventive concept that is not independent and distinct from that of the apparatus claims. It cannot be seen how another materially different apparatus could be used to practice the method of method claim 32.

For these reasons it is respectfully submitted that a prima facie case for restriction has not been met and that it should be withdrawn.

### III. PROVISIONAL ELECTION

Applicant elects, with traverse, Group I claims 1-30, 43 and 44.

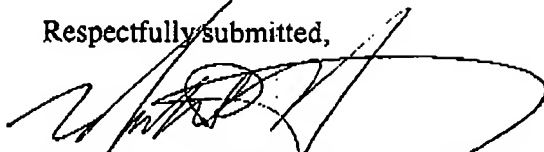
### IV. CONCLUSION

It is respectfully submitted all matters raised in the present office action have been addressed and/or remedied. Favorable action is respectfully requested.

It is not believed any fee or request for extension of time is required for entry of this response, but if any has been inadvertently overlooked, please consider this a request therefore any required fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



MARK D. HANSING, Reg. No. 30,643  
MCKEE, VOORHEES & SEASE, P.L.C.  
801 Grand Avenue, Suite 3200  
Des Moines, Iowa 50309-2721  
Phone No: (515) 288-3667  
Fax No: (515) 288-1338  
**CUSTOMER NO: 22885**

Attorneys of Record

- pw/bja -